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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,788	08/01/2003	Paul C. Wacker	H0005416 (1161.1128101)	5829

128 7590 10/06/2004

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EXAMINER

TANNER, HARRY B

ART UNIT	PAPER NUMBER
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3744

DATE MAILED: 10/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/632,788

Applicant(s)

WACKER, PAUL C. 

Examiner

Harry B. Tanner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5-9 and 12-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Pittman. Pittman discloses a method and system for controlling a HVAC system having a heating unit and a cooling unit in which the heating and cooling units are both operated if the room temperature is below the set point temperature and the humidity is above the humidity set point (see blocks 80, 88 and 90 of Figure 3) and only the cooling unit is operated if the room temperature is above the set point temperature regardless of the humidity in the room (see blocks 80 and 82 of Figure 3).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pittman as applied to claim 1. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the system of Pittman such that heating and cooling systems were sized to meet the expected heating and cooling loads in order to eliminate the need for any additional heating and cooling units.

Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pittman as applied to claim 1 above, and further in view of Official Notice. Official Notice is taken that the use of computers to control HVAC systems were conventional at the time the invention was made. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the system of Pittman such that it included the use of a computer to control the heating and cooling units wherein the control program would inherently be stored on computer-readable medium.

Claims 4 and 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pittman as applied to claim 1 above, and further in view of Alford. Alford teaches the use of multiple stages of cooling in which heating and cooling units are operated together if only the first stage cooling is required and the humidity is above the humidity set point (see blocks 210, 216, 218, 220 and 222 of Figure 6) and only the cooling units are operated if second or more stages of cooling are required regardless of the humidity in the room (see blocks 210, 220 and 224 of Figure 6). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the system of Pittman such that it included the use of multiple stages of cooling in which heating and cooling units are operated together if only the first stage cooling is required and the humidity is above the humidity set point and only the cooling units are operated if second or more stages of cooling are required regardless of the humidity in the room in view of the teachings of Alford.

Applicant's arguments filed on July 12, 2004 have been fully considered but they are not persuasive. For example, with respect to applicant's contention that the system of Pittman is not a heating and cooling system but rather a cooling and hot water heating system, it is noted that Pittman discloses both heating and cooling modes in which the heating mode uses the hot water from hot water tank 32 (see col. 4, lines 48-57 and col. 6, lines 14-24). Pittman even uses a conventional HVAC thermostat to control the heating and cooling modes. Applicant's claims recite heating unit in very broad terms. Any device that provides a heating mode of operation whether it uses hot water or some other source of heat meets the limitations as recited in the claims.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry B. Tanner whose telephone number is (703) 308-2622. After November 19, 2004 the number will be (571) 272-4813. The examiner can

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normally be reached 8:30 am to 6:00 pm Monday, Wednesday, Thursday and Friday and 2:00 pm to 6:00 pm Tuesday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Denise Esquivel, can be reached on (703) 308-2597. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Harry B. Tanner", with a stylized flourish at the end.

Harry B. Tanner
Primary Examiner
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